BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Petition of Ameritech for Forbearance from	)	CC Docket 99-65
Dominant Carrier Regulation of its	)	
Provision of High Capacity Services in the	)	
Chicago LATA	)	

Comments of the Association for Local Telecommunications Services
in Opposition to the Petition for Forbearance

The Association for Local Telecommunications Services ("ALTS"),[1] pursuant to Public Notice DA 99-334, released February 16, 1999, hereby files its initial comments in opposition to the petition of Ameritech asking the Commission to forbear from regulating it "as a dominant carrier in the provision of high capacity special access, dedicated transport for switched access, and interstate intraLATA private line (point-to-point) services ('high capacity services') in the Chicago, Illinois, local access and transport area ('LATA')." This is the fifth petition filed by a Regional Bell Operating Company seeking virtually the same Commission ruling for either a specific area or its entire service area.[2] And, for virtually the same reasons that the Commission

[1] ALTS is the national trade association representing facilities-based competitive local exchange carriers.

[2] See Petition of U S WEST Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, CC Dkt No. 98-157; Petition of the SBC Companies for Forbearance from Regulation as a Dominant Carrier for High Capacity Dedicated Transport Services in Specified MSAs, CC Dkt No. 98-277 (filed December 7, 1998); Petition of U S WEST Communications, Inc. For Forbearance from Regulation as a Dominant Carrier in the Seattle, Washington MSA, CC Dkt 99-1; Petition of Bell Atlantic Telephone Companies for Forbearance from Regulation as Dominant Carriers in Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Washington, D.C., Vermont,

should deny the other petitions, the Commission should deny the instant petition.

The Ameritech petition asks that the Commission, pursuant to Section 10 of the Communications Act of 1934, as amended, exercise its authority to forbear from rate regulating its high capacity services in the Chicago LATA.[3] Ameritech's primary argument is that it lacks market power in the high capacity services market because the market for high capacity services in the Chicago LATA is "vigorously competitive". Therefore, reasons Ameritech, rate regulation is not necessary to ensure that its rates are just and reasonable and not unjustly discriminatory. Ameritech also asserts that in fact the continuation of dominant carrier regulation of Ameritech's high capacity services "would itself be anti-competitive and injurious to customers" because the "regulatory process virtually eliminates Ameritech as a source of competitive price pressure." Petition at 5.

I. THE COMMISSION SHOULD NOT CONSIDER THE AMERITECH PETITION OUTSIDE OF THE ACCESS CHARGE REFORM PROCEEDING.

The Commission has an ongoing proceeding in which issues of pricing flexibility for ILEC access services are raised. In order to conserve Commission resources and preserve the integrity of the Commission's procedural processes, the Commission should consider the

---

and Virginia, CC Docket No. 99-24 (filed Jan. 20, 1999). In addition, in its filing Ameritech infers that it will file a similar petition "to remove dominant carrier status from Ameritech in all of its major metropolitan areas . . . in the near future." Aron Study at 2.

[3] Ameritech's request is that the Commission forbear from enforcing the Commission's Part 61 tariff rules as they apply to dominant carriers and "any other" rules affecting high capacity services "which result in different regulatory treatment for Ameritech vis-a-vis non-dominant carriers. Ameritech states that it is not requesting that its high capacity services be fully deregulated. As a non-dominant carrier Ameritech states that it should be subject to permissive detariffing, however.

Ameritech request in the Access Charge Reform proceeding. It was less than six months ago that the Commission released a public notice asking parties to update and refresh the record in the Access Charge Reform and Price Cap dockets.[4] The Commission sought additional comment because several parties had filed petitions or ex partes proposing significant changes to the Commission's Access Charge Reform and Price Cap proceedings. In particular, the Commission had received proposals for pricing flexibility for ILECs. Thus, the Commission has before it an ongoing proceeding in which at least some of the remedy sought by Ameritech may be adopted by the Commission. Until the Commission completes its consideration of the pricing flexibility proposals in those dockets it would be premature for the Commission to grant the Ameritech petition.

As the Commission is well aware, the instant petition is the fifth petition filed by Regional Bell Operating Companies seeking similar treatment for their services.[5] As ALTS predicted several months ago, if the Commission attempts to deal with each of these requests individually, rather than in the Access Charge Reform docket, it will be (and has been) barraged with numerous separate petitions for forbearance that will quickly strain the Commission's already overburdened staff.

---

[4] Public Notice FCC 98-256 (released October 5, 1998). See Access Charge Reform, CC Dkt No. 96-262, 12 FCC Rcd 15982 (1997), aff'd sub nom. Southwestern Bell Tel. Co. v. FCC, No. 97-2618 (8th Cir. Aug. 19, 1998); Price Cap Performance Review for Local Exchange Carriers, CC Dkt 94-1, 12 FCC Rcd 16642 (1997), appeal pending sub nom. USTA v. FCC, No. 97-1469 (D.C. Cir.). The Commission has received numerous comments in response to its request for updated information.

[5] See note 2 infra.

II. ANY PRICING FLEXIBILITY MUST BE PRECEDED BY AN ELIMINATION OF ALL BARRIERS TO COMPETITIVE ENTRY, AND THE ESTABLISHMENT OF SIGNIFICANT EFFECTIVE COMPETITION.

If the Commission does not defer consideration of the Ameritech petition until it has adopted more general rules on regulatory relief for ILEC provision of services for which competition is developing, it must deny the petition. ALTS has always stated that its members would be the first to applaud if competition had developed to the degree that the ILECs no longer maintained market power in any market. But, none of the ILECs are there yet and Ameritech has not shown that it no longer has market power or the ability to impede competitive provision of "high capacity services" in Chicago.

The Commission must be very careful in its analysis of whether market conditions are such that regulatory relief can be granted to the ILECs. As the Commission itself has recognized, the proper sequencing of ILEC pricing flexibility is critical.[6] All barriers to entry must be eliminated prior to the grant of pricing flexibility and competition must be well enough

---

[6] In the First Report and Order in the Access Charge proceeding, the Commission discussed the effect that developing competition would have on the regulatory policies relevant to the incumbents and, specifically, regulatory and pricing flexibility. The Commission concluded that:

> where competition develops, we will provide incumbent LECs with additional flexibility, culminating in the removal of incumbent LECs' interstate access services from price regulation where they are subject to sufficient competition to ensure that the rates for those services are just and reasonable and are not unjustly or unreasonable discriminatory. (Order at para. 266 (emphasis added)).

The Commission made it clear, however, that competition must precede deregulation: "[d]eregulation before competition has established itself, however, can expose consumers to the unfettered exercise of monopoly power and, in some cases, even stifle the development of competition, leaving a monopolistic environment that adversely affects the interests of consumers." Id. at para. 270.

established that anti-competitive conduct by the ILECs could not easily eliminate such competition. Premature deregulatory actions could easily enable the ILECs, with their tremendous market power and resources, to squash any and all nascent competition.

Ameritech makes a number of claims relating to market share and the competitive landscape in Chicago. Unfortunately, there are a number of its assertions that are not supported by sufficient empirical evidence and, in the amount of time allocated for comments in this proceeding and with limited resources, ALTS has been unable to verify much of the information submitted. However, even assuming the accuracy of the various statements relating to market share and the competitive landscape, Ameritech still has not shown that it lacks market power or would be unable to price its services in a manner to injure its competitors. The Commission must recognize that Ameritech has exercised significant market power for many years in the Chicago area and greater changes than just a loss of market share must take place prior to a finding that the markets are competitive.

Ameritech is the first ILEC to have claimed to have lost as significant a market share as AT&T had lost when the Commission granted AT&T non-dominant status. But even assuming that its numbers are correct, the Commission must recognize that there are very big differences between the interexchange market of the 1980s and the local access market of today. The barriers to entry to the interexchange market were substantially lower than the barriers to entry to the competitive access and local exchange markets today and AT&T had less ability to discriminate or use predatory pricing against its competitors than ILECs have against their competitors. The availability of volume discounts in the interexchange market made entry into that market relatively straightforward and facilities-based interexchange carriers did not have any dependence upon AT&T facilities in the provision of their business.

In comparison, CLECs are dependent upon ILECs for interconnection and collocation of their equipment. CLECs access their customers either through their own facilities or through collocation and use of ILEC loops. Thus, as acknowledged by Ameritech, competitors often are dependent upon ILEC facilities to provide their services. Ameritech's ability to stifle competition in high capacity services is much greater than AT&T's ability to unreasonably foreclose or deter entry or to stifle the competition that had developed at the time the Commission granted it pricing flexibility. Therefore, at the very least, the Commission should not consider regulatory relief for Ameritech or any ILEC until competitors have been shown to have effective and efficient access to ILEC networks as required by the Telecommunications Act.

Finally, Ameritech has not shown that regulation is unnecessary to ensure that the charges, practices, classification, or regulations by, for, or in connection with those services are just and reasonable. Ameritech fails to address its ability to cross-subsidize its high capacity services with revenue obtained from product areas in which it indisputably retains dominant market power. As the dominant provider of local exchange and local access services in Illinois Ameritech clearly has the ability to lower prices to predatory levels, thereby destroying whatever competition may have developed. Such predatory pricing might benefit consumers in the short term, but clearly would not be in the consumers' best interests in the long run. ALTS is not contending that regulatory forbearance for any service is inappropriate until the ILECs are non-dominant in all services, but certainly the ability to cross-subsidize from non-competitive services must be considered.[7] Predatory pricing would be especially likely to succeed in

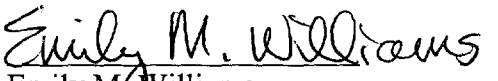
[7] Cf. In re Southwestern Bell Telephone Co., CC Dkt No. 97-158 (released November 14, 1997), ("Allowing SWBT to respond to RFPs before its market is open to competition

discouraging new entrants in the local access and local exchange markets where the initial investment required to enter the market is substantial.[8]

CONCLUSION

The Commission should deny the Ameritech application. The Commission already has an open proceeding in which the Commission can consider taking small steps to forbear from applying certain regulations if that becomes appropriate. In addition, Ameritech has not satisfied any of the statutory prerequisites for grant of forbearance.

Respectfully Submitted,



Emily M. Williams
Association for Local
Telecommunications Services
888 17th St., N.W. Suite 900
Washington, D.C. 20036
(202) 969-2595

March 31, 1999

---

creates a situation where SWBT can disadvantage its rivals by denying them access to key inputs." (para. 51)).

[8] For a discussion of predatory pricing and the effects it can have on competitive entry, see Ordover, Janusz A. and Saloner, Garth, "predation, Monopolization, and Antitrust" in Handbook of Industrial Organization, (Schmalensee, Richard and Willig, Richard eds. 1989).

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of the Association for Local Telecommunications Services was served March 31, 1999, on the following persons by first-class mail or by hand service, as indicated.

Emily M. Williams

Emily M. Williams

Michael S. Pabian
Counsel for Ameritech
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, Illinois 60196-1025

Jane Jackson
Chief, Competitive Pricing Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

ITS*
1231 - 20th Street, N.W.
Washington, D.C. 20036

* By Hand